England. Proving unreasonably narrow, it was undermined by numberless subtle distinctions, until the law was thrown into such confusion that "a court would not appear to act too boldly whichever side of the proposition they adopted." *Stackpole* v. *Beaumont*, 3 Ves. Jr. 89, 98. One will not, therefore, quarrel with the result of the principal case, but the result seems better than the reasoning; *i. e.* that any condition is to be held valid unless there was actual intent on the part of the testator to discourage marriage, even though its obvious effect will be to do so. Some authority supports this doctrine. *Jones* v. *Jones*, 1 Q. B. D. 279; *Scott* v. *Tyler*, 2 Dick. 712, 722; *Mann* v. *Jackson*, 84 Me. 400; *Harlow* v. *Bailey*, 189 Mass. 208, 212. But the silent authority of the mass of decisions is against it. See cases collected in the dissenting opinion of CULLEN, C. J. On principle it seems that no sensible rule can be laid down but this: that each case should be considered with regard to all the circumstances, and decided on its own inherent reasonableness. See 2 REDFIELD, WILLS, 3 ed. 291, note. The state is interested in the prevention of race suicide and immorality, not the punishment of whimsical testators. *Commonwealth* v. *Stauffer*, 10 Pa. St. 350, 353. See 2 JARMAN, WILLS, 5 Am. ed., 573. Only when as a practical matter the condition will be a material check upon marriage should it be stricken out.

MORTGAGES — PRIORITIES — FLOATING SECURITIES: DEBENTURES. — Where an English corporation had charged all its property "whatsoever and wheresoever, both present and future" with a floating mortgage in the form of a debenture, payable on demand, the debenture holder, by claiming a prior lien, sought to prevent a judgment creditor from garnishing one of the mortgagor's assets. *Held*, that as the debenture was still floating and had not as yet attached to any specific asset the judgment creditor was entitled to have his garnishment order made absolute. *Evans* v. *Rival Granite Quarries*, [1910] 2 K. B. 974. See NOTES, p. 389.

NEGLIGENCE — DEFENSES — INJURY SUSTAINED IN SAVING PROPERTY ENDANGERED BY ANOTHER'S NEGLIGENCE. — Employees of the defendant company negligently removed a service cock from a city water main, permitting the water to be forced into an open window of apartments of which the plaintiff was caretaker. While she was attempting to close the window the plaintiff's clothes became soaked with water, and illness resulted. The court drew an inference of fact that there was no chance of closing the window without getting wet. *Held*, that the plaintiff is not entitled to recover. *Taylor* v. *Home Telephone Co.*, 128 N. W. 728 (Mich.).

The decision represents the view adopted by the Michigan courts, and a few other jurisdictions. *Cook* v. *Johnston*, 58 Mich. 437; *Pike* v. *Grand Trunk Ry. Co.*, 39 Fed. 255. See 16 HARV. L. REV. 379. The general rule, however, seems to be that it is not contributory negligence *per se* for one with reasonable prudence to expose himself to danger, for the purpose of saving his own or another's property from injury. *Liming* v. *Illinois Central R. Co.*, 81 Ia. 246; *Wasmer* v. *Delaware, Lackawanna, & Western R. Co.*, 80 N. Y. 212. The courts adopt this rule more readily in cases of saving human life. *Eckert* v. *Long Island R. Co.*, 43 N. Y. 502; *Henry* v. *Cleveland, C., C. & St. L. Ry. Co.*, 67 Fed. 426. And the plaintiff who has acted instinctively has usually been allowed to recover. *Cf. Coulter* v. *American Merchants' Union Express Co.*, 56 N. Y. 585. In the principal case the plaintiff deliberately walked into the water, and the court, applying the maxim *volenti non fit injuria*, holds that this alone is enough to bar a recovery. It seems that the right to recover should depend upon the reasonableness of the plaintiff's act, though she became wet deliberately in closing the window. *Cf. McKenna* v. *Baessler*, 53 N. W. 103 (Ia.); *Owen* v. *Cook*, 81 N. W. 285 (N. D.). But see 13 HARV. L. REV. 599. The decisions

are uniform in not allowing a plaintiff to recover who has acted unreasonably to save property exposed to danger by the negligence of the defendant. *Pegram* v. *Seaboard Air Line Ry. Co.*, 139 N. C. 303.

NEGLIGENCE — DUTY OF CARE — DUTY TO RESCUER OF PERSON ENDANGERED BY DEFENDANT'S NEGLIGENCE. — Through the negligence of the defendant, A's horses were frightened by the defendant's engine and became unmanageable alongside of the defendant's tracks, so that A was placed in a dangerous position. The plaintiff tried to rescue A, and received injuries for which he sued the defendant. *Held*, that the plaintiff can recover. *Dixon* v. *New York, New Haven, & Hartford R. Co.*, 92 N. E. 1030 (Mass.).

Endangering oneself to save life, it is well settled, is not necessarily contributory negligence such as to bar recovery by the rescuer. *Eckert* v. *Long Island Railroad*, 43 N. Y. 502. But most of the cases consider the question of contributory negligence merely, without explaining how any duty to the rescuer arises upon which to ground his action. To maintain an action for negligence there must be a duty owing from this particular defendant to this particular plaintiff. See *Sweeny* v. *Old Colony & Newport R. Co.*, 10 Allen (Mass.) 368, 372. Once the plaintiff has come upon the track, the defendant must use reasonable care to avoid an accident. But then it is generally too late to save the plaintiff by any amount of care, so there is no failure to discharge this duty. But the foreseeable consequence of endangering A is that the plaintiff will try to save him. The negligence towards A is the proximate cause of the plaintiff's injuries. *Maryland Steel Co.* v. *Marney*, 88 Md. 482. The defendant, therefore, owes the plaintiff a duty not so to imperil A as to induce the plaintiff to act to his injury. This is the result reached by the principal case, and other courts have come more blindly to the same conclusion. *Pennsylvania Co.* v. *Langendorf*, 48 Oh. St. 316. See *Donahoe* v. *Wabash, St. Louis, & Pacific Ry. Co.*, 83 Mo. 560, 564.

NUISANCE — WHAT CONSTITUTES NUISANCE — TUBERCULOSIS SANITARIUM. — The plaintiff sued for an injunction on the ground that the defendant's tuberculosis sanitarium was a nuisance under a statute declaring any act which annoys, injures, or endangers the comfort, repose, health, or safety of others to be a nuisance. The lower court denied relief on the grounds that there was no real danger, and that in the light of scientific investigations the existing public fear of tuberculosis was unfounded and imaginary. *Held*, that an injunction should issue. *Everett* v. *Paschall*, 111 Pac. 879 (Wash.).

In basing its decree on the disturbance of the plaintiff's comfortable enjoyment by fear, the court has run counter to Blackstone and early common-law decisions. *Baines* v. *Baker*, 1 Ambl. 158; *Anonymous*, 3 Atk. 750. The English courts still demand a real and appreciable danger before granting an injunction in hospital cases. *Fleet* v. *Metropolitan Asylums Board*, 2 T. L. Rep. 361. In this country such institutions are not nuisances *per se*. *Barnard* v. *Sherley*, 135 Ind. 547. In general, a nuisance requires physical, and not merely mental, discomfort. *Cleveland* v. *Citizens Gas Light Co.*, 20 N. J. Eq. 201. It must also appear that the acts complained of would affect all reasonable persons similarly situated. *Rogers* v. *Elliott*, 146 Mass. 349. In the closely analogous case of explosives only the actual danger of injury is considered. *Heeg* v. *Licht*, 80 N. Y. 579. Nor will equitable relief be granted unless the complainant shows that his injury will be real and the damage irreparable. *Vickers* v. *City of Durham*, 132 N. C. 880. On the other hand, one prior decision has been based on personal fear. *Stotler* v. *Rochelle*, 109 Pac. 788 (Kan.). In view of the better established grounds on which relief might have been granted in the principal case, the court appears to have taken an unwarranted and hasty step that may involve serious difficulties for at least one type of our most humane institutions.